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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) MM Docket No. 00-10
Establishment of a Class A)
Television Service)

To: The Commission

RECEIVED
FEB 10 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF
CERTAIN CHANNEL 2-6 LICENSEES**

The undersigned broadcasters (hereinafter referred to as "Channel 2-6 Licensees") are a group of licensees currently licensed to operate 23 NTSC television stations between channels 2 and 6, all of which have been assigned DTV stations outside the core (DTV channels 2-51) during the DTV transition.¹ Pursuant to Section 1.415 of the Commission's rules, these Channel 2-6 Licensees respectfully file these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.²

Channel 2-6 Licensees believe that the tentative conclusions set forth in the Class A NPRM, if adopted, would faithfully implement the objectives of the Community Broadcasters Protection Act of 1999, 47 U.S.C. § 336(f) ("CBPA," or "the Act"). In particular, the Commission should be applauded for advancing proposals which, while seeking to protect the valuable programming provided by those low power television stations that warrant Class A status, recognize the critical importance of facilitating the transition to digital service by the

¹ See A list of signatories is attached hereto as Exhibit A. An additional seven stations owned and operated by Fox Television Stations, Inc. have NTSC 2-6 channels, and are entitled to return to those stations after the transition. These are: WTTG (Washington, D.C.), KDFW (Dallas, TX), WAGA (Atlanta, GA), KTVI (St. Louis, MO), WITI (Milwaukee, WI), WDAF-TV (Kansas City, MO), and WBRC (Birmingham, AL).

² *Establishment of a Class A Television Service*, Order and Notice of Proposed Rulemaking, MM Docket No. 00-10, FCC 00-16 (rel. January 13, 2000) ("Class A NPRM").

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nation's full-power television stations. Channel 2-6 Licensees urge the Commission to implement its proposals so as to remove any uncertainty that the introduction of a Class A LPTV service might otherwise create with regard to the replication and maximization rights of these channel 2-6 licensees. In particular, the Commission should make clear that (1) the CBPA prohibits the authorization of Class A service where there is any possibility of a conflict with full-power DTV stations on channels 2-6 (whether those stations are occupied by new DTV channel 2-6 licensees or licensees reverting to their existing NTSC channels after the transition), and that (2) the introduction of a Class A service may not impede the ability of *any* full power DTV station, including these Channel 2-6 Licensees, to achieve service replication and an opportunity for maximization on its final DTV channel allotment in accordance with the Commission's rules.

Background

Licensees that operate NTSC stations between channels 2 and 6, but that have been assigned DTV channels outside the channel 2-51 core, face a unique degree of uncertainty regarding the future of their DTV operations. Like all licensees assigned non-core DTV channels, these licensees will be required to activate their DTV stations on channels that they must ultimately relinquish after the transition is complete. Unlike others, however, these licensees cannot rely with assurance on being able to reoccupy their original NTSC allotments after the transition. The Commission has now determined that channels 2-6 will be part of the final DTV core spectrum.³ These Channel 2-6 Licensees hope to be able to relocate to those existing channels after the transition, both because of their superior transmission characteristics and because of the value of retaining the established identity of these channels. However, as the Commission has previously noted, high levels of atmospheric and man-made noise could make

³ *Advanced Television Systems*, Order on Reconsideration of Sixth Report & Order, 13 FCC Rcd 7418 (1998).

use of these low VHF band channels unsuitable for DTV.⁴ DTV is in its infancy, and these technical questions will not be resolved until full implementation of DTV -- well after the certification process for Class A stations has run its course. Accordingly, these licensees ultimately may be forced to provide DTV service from a third -- and presently unknown -- channel.

The CBPA makes clear that Congress intended to carry forward the Commission's proposal, in its recently terminated Class A rulemaking, to preserve the replication and maximization rights of full-power television broadcasters. However, the Act's certification process for Class A stations poses a difficult timing problem for safeguarding those goals. Because Channel 2-6 Licensees cannot yet determine the DTV channel they will ultimately be required to utilize at the end of the transition, it is critical that the Commission not restrict the flexibility necessary to accommodate them in the final DTV core spectrum. In particular, the Commission must be careful to accommodate the need to "repack" DTV allotments at the end of the transition. Accordingly, as detailed more fully below, Channel 2-6 Licensees request that the Commission make clear in this proceeding that their right to achieve replication and an opportunity for maximization in accordance with the Commission's rules will not be impaired or compromised by the introduction of a new Class A LPTV service.

I. THE CBPA PROHIBITS CLASS A SERVICE WHERE THERE IS ANY POSSIBILITY OF A CONFLICT WITH FULL-POWER DTV OPERATIONS ON CHANNELS 2-6.

Section (6)(B) of the CBPA provides that the Commission may not grant a Class A license to an LPTV station "operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of [the] . . . *Memorandum Opinion & Order on Reconsideration of the Sixth Report & Order*, 13 FCC Rcd 7418 (1998)." 47 U.S.C. § 336(f)(6)(B). The CBPA then instructs the Commission to identify those 175 channels "by

⁴ *Advanced Television Systems*, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968, ¶ 35 (1996).

channel, location, and applicable technical parameters” within 18 months after enactment of the Act. *Id.*

In the NPRM, the Commission asks whether these provisions should be interpreted “to prohibit the authorization of Class A service on TV channels 2-6.” Class A NPRM, ¶ 25. While the reference to paragraph 45 of the Commission’s order is not entirely clear, there can be little question that the CBPA prohibits the grant of a Class A license to an LPTV station where there is any chance that the station could interfere with full-power DTV operations on channels 2-6 -- irrespective of whether those DTV operations are conducted by broadcasters currently occupying DTV channels 2 and 6 or licensees reverting to their existing NTSC channels after the transition.

The 175 additional allotments specified in section 6(B) of the CBPA refer quite clearly to those allotments created by the Commission’s decision to expand the core to include channels 2-6. Thus, in the Joint Explanatory Statement of the Conference Committee, the Committee explicitly referred to television broadcast stations “2 through 51” as the “frequencies that will eventually comprise the core spectrum.” Joint Explanatory Statement of the Committee of Conference at p. 64 (December 31, 1999). Accordingly, the grant of a Class A license to an LPTV station that could potentially interfere with any of the new DTV allotments created by the expansion of the core would be flatly inconsistent with the intent of the CBPA to preserve opportunities for relocation to channels 2-6 established in the Commission’s *Reconsideration of the Sixth Report & Order*.⁵

⁵ *Reconsideration of the Sixth Report & Order*, 13 FCC Rcd 7418, ¶ 42 (1998). Of course, as noted above, it is presently unclear whether relocation of a DTV service to channels 2-6 will be feasible for Channel 2-6 Licensees. In the event that it is not, the Commission could revisit the question of whether and under what circumstances Class A stations on such channels would be appropriate.

II. THE CLASS A SERVICE MAY NOT IMPEDE THE ABILITY OF ALL FULL-POWER DTV STATIONS TO ACHIEVE REPLICATION, INCLUDING CHANNEL 2-6 LICENSEES.

In the NPRM, the Commission tentatively concludes that new Class A licensees will not be protected from "DTV stations seeking to replicate their analog TV service areas," and "DTV stations that encounter technical problems that necessitate ... channel changes." Class A NPRM, ¶ 13. Channel 2-6 Licensees wholeheartedly endorse those tentative conclusions.

Throughout the DTV proceeding that formed the backdrop to this new Act, the Commission emphasized the critical importance of the service replication principle. As the Commission recognized, it is essential that "broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air."⁶ In promulgating rules to establish a new Class A service, the Commission should reaffirm its commitment to that principle. In that regard, the Commission should make unequivocally clear that the introduction of a Class A LPTV service may not impede the ability of any full-power DTV station, including Channel 2-6 Licensees, to achieve service replication in accordance with the Commission's DTV rules and principles.

In the Commission's recently terminated Class A rulemaking, which responded to a petition by the Community Broadcasters Association ("CBA"), the Commission tentatively concluded that "Class A status cannot be permitted to interfere with DTV broadcasters' ability to replicate ... their NTSC service areas, a primary goal in the DTV proceeding".⁷ The Commission further concluded that

any requirement to protect Class A stations must not restrict our flexibility to make necessary adjustments to DTV allotment parameters, including channel changes. Accordingly, we propose that Class A primary status include this 'safety net' provision.

⁶ *Advanced Television Systems*, Sixth Report & Order, MM Docket No. 87-268, FCC 97-115, ¶ 29 (rel. April 21, 1997).

⁷ *Establishment of a Class A Television Service*, MM Docket No. 99-92, FCC 99-257, ¶ 26 (rel. Sept. 29, 1999).

Id. ¶ 28. The CBA has fully endorsed this position. Indeed, the CBA emphasized its commitment to “avoid[ing] interference from Class A stations to the digital television service ... to the extent of its analog coverage.”⁸

The CBPA, which was enacted against the background of that Class A rulemaking proceeding, was intended to be fully consistent with these principles. Indeed, the CBPA mandates that the Commission “make such modifications as necessary ... to ensure replication of full-power digital applicant’s service area.” 47 U.S.C. § 336(f)(1)(D)(i). The Commission should also make clear -- as it had previously tentatively concluded and as CBA has agreed -- that the new Class A service will not impair the ability of all full-power licensees, including Channel 2-6 Licensees, to make necessary channel changes after the transition is over in order to find fully replicating allotments -- whether or not those changes postdate the Class A certification and licensing process.

Such a clarification is required because Channel 2-6 Licensees, as noted above, will not be able to determine the appropriate channel for their DTV operations until after the transition is over. Because these licensees have initial DTV allotments outside the core and may not be able to reoccupy their analog channels due to technical problems, the Commission should ensure that the new Class A service will not impair their ability to achieve the same degree of replication as other full-power broadcasters. Nothing in the CBPA, its legislative history, or the Commission’s DTV rules -- specifically referred to in the CBPA -- suggests that Channel 2-6 Licensees are entitled to any less of an opportunity to replicate their analog service areas than the other full-power broadcasters protected by the Commission’s DTV Table. A contrary determination would undercut Congress’s and the Commission’s strong policies in favor of replication, disenfranchise viewers, and jeopardize a smooth transition to DTV.

⁸ Report of *Ex Parte* Communication of Community Broadcasters Association, MM Docket No. 99-292, at p.2 (October 14, 1999).

III. SIMILARLY, THE CLASS A SERVICE MAY NOT INTERFERE WITH THE ABILITY OF FULL-POWER DTV STATIONS TO EXERCISE THEIR MAXIMIZATION RIGHTS.

Likewise, the Commission should make clear that the introduction of a Class A LPTV service will not interfere with the right of all full-power broadcasters, including these channel 2-6 Licensees, to maximize their respective DTV service areas in accordance with the Commission's rules. A clarification is particularly important in this regard because the CBPA does not expressly address the question whether all DTV licensees seeking protection from the new Class A service must file maximization applications by May 1, 2000. See 47 U.S.C. § 336(f)(1)(D)(ii).

As the Commission observes in the NPRM, some stations "may not be in a position to file maximization applications by the deadline prescribed in the statute." Class A NPRM, ¶ 34. Channel 2-6 licensees fall squarely into that category. As noted above, these licensees cannot yet determine the DTV channel for which they may ultimately request maximization. They will be unable to do so until they test out their future DTV facilities, many of which the Commission's rules do not require to be constructed until May 1, 2002. 47 C.F.R. § 73.624(d). They are thus in no position to file *bona fide* maximization applications by May 1, 2000. These licensees clearly should not be stripped of an opportunity to exercise their maximization rights simply because they happen to have been assigned initial DTV allotments outside the core, or as a result of unknown possible technical difficulties with using their original NTSC allotments for DTV service. Nothing in the CBPA, its legislative history, the Communications Act or the DTV implementation scheme supplies any support for penalizing such licensees. Accordingly, the Commission should make clear the right of all full-power broadcasters to maximize their service areas in accordance with the Commission's rules, even where maximization requires the submission of a maximization application after the transition has been completed.

Respectfully submitted,

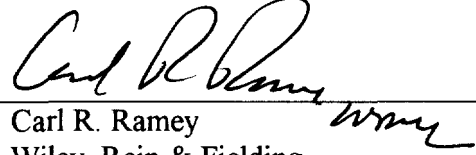
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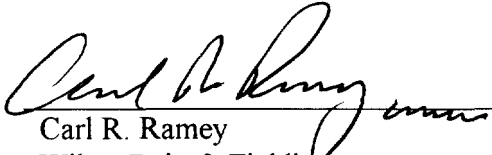
Young Broadcasting of Lansing, Inc.
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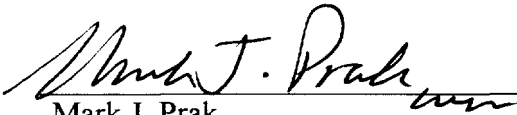
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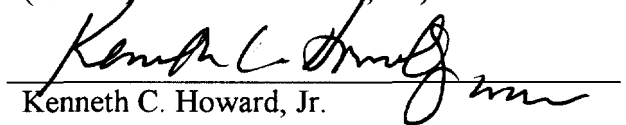
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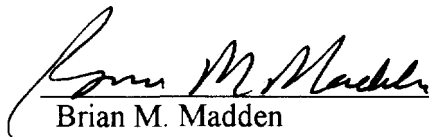
Scripps Howard Broadcasting Company
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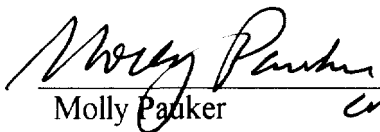
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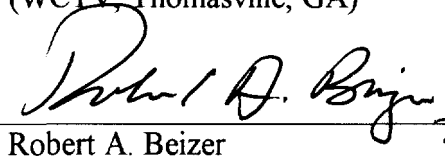

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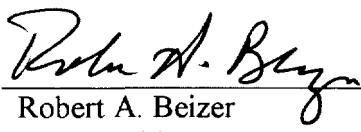
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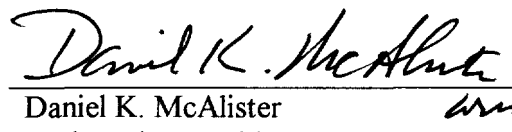
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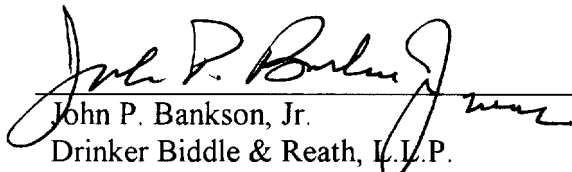
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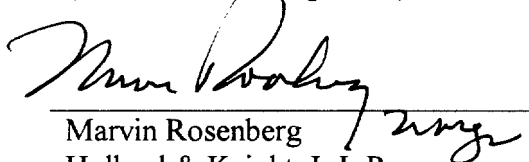
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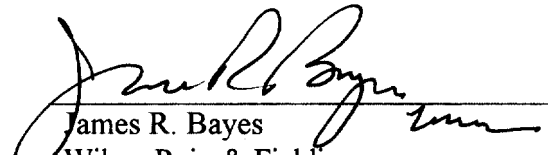
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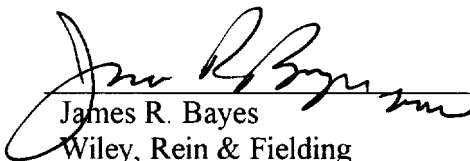
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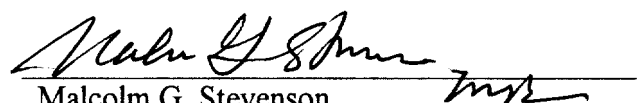
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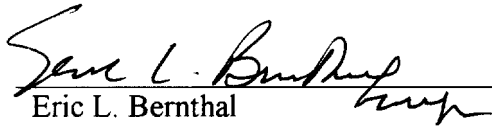
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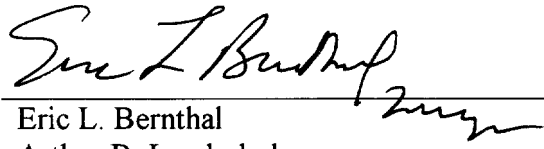
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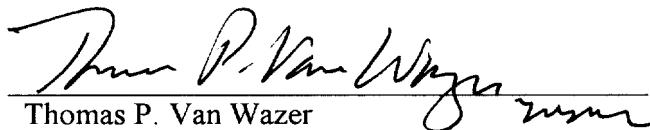
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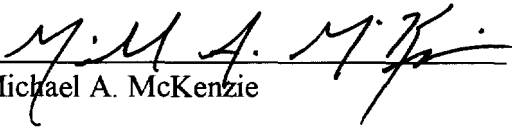
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 2000, I caused a true copy of the foregoing "Comments of Certain Channel 2-6 Licensees" to be served by hand delivery upon the persons listed on the attached service list.


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WMAR-TV, Baltimore, MD
WPTV, West Palm Beach, FL
WRCB-TV, Chattanooga, TN
WJPK-TV, Detroit, MI
KBTX-TV, Bryan, TX
WTKR-TV, Norfolk, VA
WCTV, Thomasville, GA
WCSC-TV, Charleston, SC
WIPR-TV, San Juan, PR
WRAL-TV, Raleigh, NC
KMOV-TV, St. Louis, MO
KENS-TV, San Antonio, TX
KOTV, Tulsa, OK
WUNC-TV, Chapel, NC
WOI-TV, Ames, IA
WHBF-TV, Rock Island, IL
WCIV-DT, Charleston, SC